

**Amendment No. 1 to SB3128**

**Springer  
Signature of Sponsor**

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Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

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**House Bill No. 3123**

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 6, is amended by adding the Sections 3 through 15 of this act as new sections.

SECTION 2. This act shall be known and may be cited as the "Health Professional Licensure Agency Act of 2000."

**SECTION 3.**

As used in this act, unless the context otherwise requires:

(1) "Board" means the board of medical examiners;

(2) "Commissioner" means the commissioner of the department of health or the commissioner's designee;

(3) "Department" means the department of health; and

(4) "Executive director" means the director the board.

SECTION 4. The board of medical examiners shall be a political subdivision and instrumentality of the state. As such, the board shall be deemed to be acting in all respects for the benefit of the people of the state in the performance of essential public functions, and shall be deemed to be serving a public purpose through protecting, improving and otherwise promoting the well-being of the citizens of the state.

SECTION 5. The board of medical examiners is hereby constituted as a body politic and corporate. The nine (9) physicians and three (3) consumers who are members of the board of medical examiners prior to the effective date of this act shall constitute the initial board of medical examiners created by this act. Such members shall continue to serve for the duration of their original terms established at the time of their original appointment. Thereafter, physician

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members shall be appointed to the board as provided in Tennessee Code Annotated, Sections 63-6-101, 63-6-102. Consumer members shall be appointed pursuant to Tennessee Code Annotated, Section 63-1-128.

SECTION 6. The board of medical examiners shall have the following powers and duties in addition to the powers and duties granted to or imposed upon it in Title 63, Chapters 6 and any other provisions of law:

(1) Adopt written policies, procedures or rules and regulations to govern its internal operations;

(2) Make and execute contracts and all other instruments necessary or convenient for the exercise of their duties and responsibilities under this chapter. All contracts pertaining to acquisitions and improvement of real property, pursuant to § 4-15-102, must be approved in advance by the commissioner and the state building commission;

(3) Acquire or dispose of in the name of the board real or personal property or any interest therein, including rights or easements, on either a temporary or long-term basis by gift, purchase, transfer, foreclosure, lease or otherwise, subject to subdivision (2);

(4) Procure insurance in amounts and from insurers, which the board deems desirable to protect themselves in carrying out its duties and responsibilities under this;

(5) Seek assistance from the commissioner of finance and administration, the comptroller of the treasury, the state treasurer, and other state agencies;

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(6) Receive, administer, allocate and disburse funds made available under this chapter, funds and contributions from private or local public sources which may be used in support of a board, council or committee, and funds made available under any federal or state assistance program for which the board may serve as grantee, contractor or sponsor of projects;

(7) Perform other acts necessary or convenient to exercise the powers granted or reasonably implied in this chapter, including the authority to license, certify, and regulate x-ray operators and schools for teaching x-ray operations within Tennessee;

(8) Procure goods, materials, supplies and equipment in accordance with applicable state or federal guidelines, and where practical, on a competitive basis;

(9) Contract with other state agencies to provide services to or receive services from those agencies relative to licensing and other activities as deemed appropriate by the board. In addition, the board shall be further authorized to contract for credentials verification and other similar services with credentials verification organizations incorporated in Tennessee that are accredited by the National Committee on Quality Assurance (NCQA). Such credentials verification information, when such entities transfer and transmit between hospitals and insurance networks and the department and the board, is protected by § 63-6-219; and

(10) Retain, and establish the qualifications and compensation for, an executive director, administrator, investigator, attorneys and other staff determined by the board to be necessary for the board's operation. The persons employed by the board shall serve at the pleasure of the board.

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SECTION 7. The commissioner has the duty and responsibility to:

- (1) Promulgate rules and regulations to carry out the commissioner's responsibilities under this act;
- (2) Review and approve plans of operation submitted in accordance with Section 9, with the concurrence of the commissioner of finance and administration and the comptroller of the treasury. The Commissioner is further authorized to reject any plan of operation not deemed to adequately protect the citizens of Tennessee;
- (3) Enter into such contracts, subject to applicable rules and regulations and procedures, as necessary to carry out the provisions of this part. The board shall itself have the authority to enter into contracts for administrative, disciplinary, and licensure services as it deems fit, in consultation with the commissioner;
- (4) Require the board to submit annual reports on each preceding fiscal year to reflect the nature and extent of all financial transactions and to assure financial integrity; and
- (5) Perform other acts necessary or convenient to exercise the powers granted or reasonably implied in this act.

SECTION 8. The executive director, subject to approval of the board, and approval of the plan of operation pursuant to Section 9 has the authority to hire such employees, set such salaries and incur such expenses as may be necessary for proper discharge of the duties of the board.

SECTION 9. (a) At least ninety (90) days prior to the beginning of each state fiscal year, the board shall submit a plan of operation for review and approval to the commissioners of

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health and finance and administration and the comptroller of the treasury. The plan of operation shall be in such form as may be required by the department and shall include, but not be limited to, the following:

(1) A budget for operating and capital expenditure;

(2) Contracts for services;

(3) Appropriate policies and procedures adopted by the board to govern the expenditures of funds; and

(4) Other items as required by the department through rules and regulation

(b) The plan of operation may be amended during the fiscal year with the written approval of the commissioners of health and finance and administration and the comptroller of the treasury.

(c) For the first year of operation, a plan of operation shall be submitted within sixty (60) days of July 1, 2000.

SECTION 10. (a) The executive director of the board shall deposit with the state treasurer funds received from the United States treasury and other funds earned, given, collected, or granted to the agency, including state funds.

(b) Such funds may be invested in the local government investment pool pursuant to Title 9, Chapter 4, Part 7.

(c) The board may establish such bank accounts pursuant to § 9-4-302, as are necessary for the efficient management of their respective agency.

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(d) All funds deposited shall be credited by the state treasurer as provided in § 63-1-137.

SECTION 11. (a) The board shall make an annual report to the governor and to the commissioner.

(b) This report shall contain an accounting for all money received and expended, statistics on persons served during the year, recommendations and such other matters as the board deems pertinent.

SECTION 12. (a) The comptroller of the treasury shall make an annual audit of the program established by this act as part of the comptroller's annual audit pursuant to § 9-3-211.

(b) The board shall maintain all books and records in accordance with generally accepted accounting principles, and at no less than those recommended in the "Accounting Manual for Recipients of Grant Funds in Tennessee" published by the comptroller of the treasury. Such records shall be made available for inspection to the department and/or the comptroller of the treasury, upon request.

SECTION 13. Employees of the board shall be considered "state employees" for purposes of § 9-8-307. Designated volunteers providing services under this part shall also be considered "state employees" for purposes of § 9-8-307.

SECTION 14. This act shall be given the following construction:

(1) This act shall be construed as remedial legislation and shall be given liberal construction to effectuate its purpose;

(2) This act shall not be construed as creating an employer-employee relationship between the department, the board or their contractors;

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(3) Except for the licensing component related fee collection functions now performed by the division of health related boards, this act shall be construed to relieve the division from any and all obligations contained in this title as to the board. It is the intent of the General Assembly that the division immediately transfer all remaining fees to the board, once the division has appropriated the funds from those fees necessary to perform licensure functions. Within three (3) years of the effective date of this act, all licensure functions, including fee collection responsibilities, shall be fully transferred to the board;

(4) This act shall not be construed as repealing any board rules in existence at the time the board on the effective date of this act and such rules shall continue in effect until such time as they are amended or repealed or terminated by operation of law; and

(5) If any provision of this part or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of the part which can be given effect without the invalid provisions or applications, and to that end the provisions of this part are declared to be severable.

SECTION 15. (a) The board shall be eligible to be a participating employer in the Tennessee consolidated retirement system.

(b) All liabilities owed by the board and all assets of whatever kind and nature and wherever located, including, but not limited to, real property, personal property,

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cash, equipment and fund balances held in the name of the board shall be transferred to the board.

(c) The employees of the board may, upon approval of the board be transferred to the appropriate board, and such transfer shall not constitute a break in service for such employees.

(d) No action taken pursuant to this act shall be deemed to change the structure of the board, formerly organized within the division of health-related boards, for federal tax reporting purposes, nor reduce employees' benefit-related plans including, but not limited to, retirement plans, deferred compensation plans, cafeteria plans and health plans.

SECTION 16. Tennessee Code Annotated, Section 63-6-224 is amended by deleting the section in its entirety and substituting instead the following new language:

(a) The board shall have, in regards to operators of x-ray equipment and/or machines in physician offices, the authority, by rules and regulations, to:

(1) Establish and issue limited x-ray certifications to qualified individuals in the areas of densitometry, chest, extremities, skull and/or sinus and lumbar spine; and

(2) Establish and issue full x-ray certifications to individuals who hold current and unrestricted national certification from the American Registry of Radiologic Technologists; and

(3) Establish the minimum educational courses, curriculum, hours, and standards which are prerequisite to issuance of the limited certificates; and



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(4) Select the examination(s) to be utilized as the board's limited certification examination(s) and the prerequisites, if any, for admission to the examination(s). The board is authorized to enter into a contract or agreement with the chosen examination service(s) or select an intermediary between the board and the examination service(s) to process applicants for the examination(s); and

(5) Establish any other criteria for issuance of limited certificates which are reasonably related to the safe and competent performance of x-ray procedures; and

(6) Establish a mechanism for the board accreditation of educational courses which are operating for purposes of qualifying individuals for limited certification and which meet the requirements established pursuant to the rules promulgated under the authority of subdivision (a)(3), and establish the causes and standards which are grounds for withdrawal of the course accreditation and the mechanism for that withdrawal; and

(7) Establish the fees to be paid for application and certification, renewal, and late renewal of certificates and the fees required to be paid for application, renewal, and late renewal of educational course accreditation; and

(8) Establish the required number of hours, types of courses, methods of proving compliance for biennial continuing education for all certificate holders.

(b) The certificates and accreditations issued pursuant to this section must be renewed and may be retired, and reactivated pursuant to board established procedures.

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Certificates issued pursuant to this section may be disciplined for the same causes and under the same procedures as contained in Tennessee Code Annotated, § 63-6-214.

(c) The standards established by the board pursuant to subsection (a) shall be at least as stringent as any mandatory federal standards.

(d) No person shall perform x-ray procedures in a physician's office without being licensed as a physician or certified by the board pursuant to this section. Persons who have enrolled in a board recognized radiologic training program are exempt from the certification requirements of this section only as to x-ray procedures performed within or under the auspices of the program in which they are enrolled. After completion of the course but while awaiting the first opportunity to sit for the certification examination, but for no more than six (6) months, and for a period of time within which to receive the examination scores, but no more than seventy-five (75) days thereafter, such persons are exempt from the certification requirements of this section.

(e) No x-ray procedures may be performed by any person holding a certificate issued pursuant to this section without:

(1) An order from a physician licensed pursuant to this chapter or an osteopathic physician licensed pursuant to chapter 9; and

(2) A physician licensed pursuant to this chapter or an osteopathic physician licensed pursuant to chapter 9 of this title exercising full supervision, responsibility and control over the services being provided. The Board is authorized to establish, by rules and regulations, the levels of supervision required of physicians utilizing persons certified pursuant to this section.

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(f) A physician's office for purposes of this section shall mean anywhere the practice of medicine as defined in section 63-6-204 which includes the performance of x-ray procedures contemplated by this section, is being conducted, except where that practice is conducted in or under the auspices of an facility or entity licensed by the department of health's division of health care facilities. The operation of a business in which x-ray procedures contemplated by this section are performed that is not owned by a physician, group of physicians, medical professional corporation, limited liability medical professional company or an entity or facility licensed by the department of health's division of health care facilities is prohibited.

SECTION 17. Tennessee Code Annotated, Section 63-6-209, is amended in subsection (a) by deleting the words "by the division as directed by the board", and is further amended in the second sentence by adding the words "or the executive director of the board" after the word and punctuation "boards," and before the word "which", and is further amended by adding the following as new-appropriately lettered subsections:

(e) For the purpose of effecting service of process upon a licensee for any purpose including service of a notice of charges, service on the licensee by certified mail, return receipt requested, at the address contained on the most recently issued registration certificate, regardless of whether the licensee accepts such service personally or through any employee or fails to accept or avoids such service, shall be sufficient for the board to proceed by default under the document certified to that address.

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(f) Before issuing any license as provided herein, the license shall be signed by the members of the board.

(g)

(1) A licensee whose license has been lost or destroyed may make application to the board for a new license. The application shall be accompanied by an affidavit setting out the facts concerning the loss or destruction of the license.

(2) Any licensee whose name is changed by marriage or court order shall surrender such person's license and apply to the board for an appropriately re-named license. This board shall not unduly delay the issuance of such renamed license, and this section does not contemplate a full re-application for such license as if the prior license was revoked.

(3) The fee for such new licenses shall be set by the board.

(h)

(1) A licensee who seeks to be licensed in another state by reciprocity or endorsement on the basis of such licensee's Tennessee license may, upon request, receive a certificate of fitness issued by the board containing all necessary and relevant information regarding the standing of the Tennessee license.

(2) The fee for this certificate shall be set by the board.

SECTION 18. Tennessee Code Annotated, Section 63-6-213, is amended in subsection (a) by deleting the words "The members of the board shall investigate" and by

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substituting instead the words "The board shall cause to be investigated", and is further amended in such subsection by deleting the words "such member or members" and by substituting instead the words "the board", and is further amended by adding the following as new subsection (e):

(e) With respect to any person required to be licensed, permitted, or authorized by the board, the board may refer cases to the appropriate law enforcement officials, including but not limited to the appropriate district attorney general. The board is also authorized to seek injunctive relief against persons practice medicine or surgery in this state without complying with the provisions of this chapter in any court of competent jurisdiction.

SECTION 19. Tennessee Code Annotated, Section 63-6-214, is amended in subdivision (a)(4) by inserting the words and punctuation ", corrective actions," between the words "censures" and "and", and is further amended in subsection (b) by adding, as a new, appropriately numbered item, the language " ( ) Practicing medicine without a license issued by the board or on a license that has been revoked or suspended by the board, or practicing in violation of any restriction or condition placed upon a license by the board;", and is further amended by deleting subsections (m), (n), and (o) in their entirety, and is further amended by adding the following language as new, appropriately numbered subdivisions in subsection (h):

(h)(3) Records of hospitals, laboratories, nursing homes, homes for the aged, ambulatory surgical treatment centers, home health agencies, home health services, and recuperation centers, except as provided in § 63-6-219, shall be made available for

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inspection and copying, at a reasonable cost, when requested by a duly authorized representative of the board.

(4) Any representative of any health care facility set out in this section who furnishes records to a duly authorized representative of the board shall be immune from liability to any patient, individual or organization for furnishing such information, data, reports or records, or for damages resulting from any decision, opinion, action and proceedings rendered, entered or acted upon by the board or any of the health-related boards, if the information or other records or documents provided were provided or created in good faith and without malice and on the basis of facts reasonably known or reasonably believed to exist. Any representative of any individual health care practitioner and any individual health care practitioner who furnishes records to a duly authorized representative of the board shall be immune from liability to any patient, individual or organization, except the board as it relates to disciplinary matters which prompted the request for the production of the records, for furnishing such information, data, reports or records, if the information or other records or documents provided were provided or created in good faith and without malice and on the basis of facts reasonably known or reasonably believed to exist.

SECTION 20. Tennessee Code Annotated, Title 63, Chapter 6 is amended by adding the following new, appropriately numbered section:

Section \_\_\_\_\_. The board is authorized to adjust any fees authorized by this chapter by means of public necessity rules to assure compliance with the provisions of § 4-3-1011.

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SECTION 21. Tennessee Code Annotated, Section 63-6-102(a)(4), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(4) The governor shall appoint physician members of the board from a list of recommendations and nominations from the Tennessee Medical Association and for other members the governor has the discretion to seek recommendations from the Tennessee Medical Association in making appointments to the board.

SECTION 22. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 23. This act shall take effect July 1, 2000, the public welfare requiring it.